STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 27, 2014
v	No. 312529 Oakland Circuit Court
DAVID DOOLIN, Defendant-Appellant.	LC No. 1983-056898-FY

Before: O'CONNELL, P.J., and WILDER and METER, JJ.

PER CURIAM.

Defendant appeals by leave granted the September 4, 2012, order of the lower court denying his application to set aside a criminal conviction. See MCL 780.621. We affirm.

In March 1983, defendant was convicted of a single count of delivery of marijuana, and the trial court sentenced him to two years' probation. In May 2012, defendant filed an application under MCL 780.621 to set aside his conviction. MCL 780.621 states, in part:

> (1) Except as provided in subsection (2),[1] a person who is convicted of not more than 1 offense may file an application with the convicting court for the entry of an order setting aside the conviction. A person who is otherwise eligible to file an application under this section is not rendered ineligible by virtue of being convicted of not more than 2 minor offenses in addition to the offense for which the person files an application.

A hearing on defendant's application took place on August 8, 2012. Defense counsel represented that defendant had been married for 30 years and was a productive member of society. Defendant testified that he had been continually employed as an elevator mechanic and was the father of two adult children. Defendant then testified about the circumstances that resulted in his arrest in 1983:

[1] Subsection (2) is not applicable in the present case.

> I got a call from -- I want to say his name was Bob Schmidt, basically he wanted to -- he wanted some weed. I don't know where he got my name from, but I wasn't at that point selling, this was my own personal weed, I had two ounces, and he begged and pleaded with me to buy the stuff, because he was going up north to go canoeing, or whatever. So anyways he -- we made the transaction, and at that time I was arrested. At that point he told me that they had a tip that I had tens of pounds of weed in the house, and I at that point told him -- I said go ahead and search the house, they said -- you know, I said all you -- all you -- all that you have is what's on that table right there, and I said that's the only reason I did it was because your friend -- or a friend of mine had told him that, you know, that he -- that he might sell it to you. So -- and my part, very bad judgment, you know, it was my own personal stuff, but -- you know, that's all it was.

The prosecutor then stated that "my records show that the Defendant pled guilty as charged back on March 14th . . . 1983 . . . ." The prosecutor also stated that "the Attorney General takes no position on [the motion]." At the conclusion of the brief hearing, the trial court indicated that it would take the matter under advisement.

The hearing on defendant's application resumed on August 22, 2012. At that time, the trial court indicated that it had reviewed the transcript from the preliminary examination—specifically, the testimony of the undercover police officer. The court read into the record, verbatim, several pages from the preliminary examination. The officer testified that before the incident that formed the basis of the conviction, the officer had purchased marijuana from defendant on at least one other occasion. The purchases took place in defendant's home. On the first occasion that the officer bought marijuana, he simply showed up at defendant's home. With respect to the charged incident, the officer scheduled an appointment with defendant. The officer had been informed that defendant's house was a location where marijuana and perhaps other narcotic substances could be purchased.

After discussing the preliminary examination testimony, the trial court noted that defendant had earlier testified under oath that the sale of the marijuana that formed the basis of the conviction was an isolated event—simply the sale of his personal marijuana as a favor to a friend of a friend. The court concluded that the preliminary examination testimony suggested that defendant "was in the business of selling marijuana . . . ." Given that the record was contrary to defendant's sworn testimony, the court found that defendant had been untruthful. It then concluded that setting aside defendant's conviction would be contrary to the public good.

We review for an abuse of discretion the decision to grant or deny an application to set aside a conviction. See *People v Grier*, 239 Mich App 521, 524; 609 NW2d 821 (2000), and *People v Van Heck*, 252 Mich App 207, 210 n 3; 651 NW2d 174 (2002). An abuse of discretion occurs if the trial court's decision falls outside the range of principled and reasonable outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

In general, MCL 780.621 states that a person who has been convicted of not more than one offense may apply after a certain period to have the court set aside the conviction if the person and the conviction meet certain criteria under the statute. The statute further provides:

> If the court determines that the circumstances and behavior of the applicant from the date of the applicant's conviction to the filing of the application warrant setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction. The setting aside of a conviction under this act is a privilege and conditional and is not a right. [MCL 780.621(9).]

"The statute by its plain language requires a balancing of factors, specifically a determination of the 'circumstances and behavior' of a petitioner balanced against the 'public welfare.'" *People v Boulding*, 160 Mich App 156, 158; 407 NW2d 613 (1986), quoting MCL 780.621(9).

In this case, the court engaged in the appropriate balancing. The court acknowledged that much time had passed and that defendant had presented himself as a changed and law-abiding person, but the court then specifically emphasized the evidence that defendant had been untruthful when recounting the circumstances of his arrest. The court stated, "if you're a Petitioner and you're offering testimony in support of your petition, then that testimony has to be truthful and accurate . . . ." Essentially, the court concluded that defendant's behavior since his conviction did not warrant setting aside that conviction. Given the seriousness of lying under oath, we cannot conclude that this conclusion was outside the range of reasonable and principled outcomes, despite the fact that defendant had been a productive member of society since his arrest.

Defendant argues that the trial court mischaracterized his testimony as untruthful and suggests that, instead, defendant's memory had simply been cloudy. However, defendant provided a significant amount of detail so as to belie this assertion. Had defendant's memory been a little faulty, he would have simply been vague in his recollection. Instead, defendant recited a story with details that he apparently hoped the court would believe.

Defendant also represents, in his statement of the question presented for appeal, that the trial court was operating under the misconception that defendant's conviction arose out of a trial, rather than a plea. Although it is not clear, apparently defendant raises this point to support the proposition that defendant accepted responsibility for his actions because he pleaded guilty to the offense. In any event, defendant's assertion that the trial court was mistaken about the nature of the conviction is unsupported by the record. Although the court initially thought that defendant went through a trial, because defendant himself made this representation, the confusion was promptly clarified for the court.

Under the circumstances, the trial court's decision was within the range of principled and reasonable outcomes and reversal is unwarranted.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter